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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

**ALEXANDER KAMB**  
Junior Party  
(Patent No. 6,090,578),

1

DAVID H. BEACH, DOUGLAS J. DEMETRICK,  
MANUEL SERRANO AND GREGORY J. HANNON,  
Senior Party  
(Application No. 09/016,869).

Patent Interference No. 105,459 (MPT)  
(Technology Center 1600)

## Judgment – Preliminary Motions - Bd. R. 127

2

3 Before: SALLY G. LANE, MICHAEL P. TIERNEY, and

4 JAMES T. MOORE Administrative Patent Judges.

5 TIERNEY, Administrative Patent Judge.

6

7 The Board has entered a Decision on Motions in this interference.  
8 (Paper 60). As discussed in the Decision, Kamb's involved claims are  
9 unpatentable as anticipated by Beach's U.S. Patent 5,889,169 under

1 35 U.S.C. § 102(e). Kamb did not seek to antedate the November 18, 1993  
2 effective filing date of Beach's '169 patent nor did Kamb file a priority  
3 statement alleging a date of conception earlier than Beach's earliest  
4 accorded filing date, which is also November 18, 1993. Accordingly, Kamb  
5 is unable to contest priority of invention. 37 C.F.R. § 41.204. Based upon  
6 the facts presented, we decline to continue the interference. Judgment is  
7 entered against Kamb.

8 It is:

9 **Ordered** that judgment on priority of invention as to Count 1, the sole  
10 count in interference, is awarded against Kamb.

11 **Further Ordered** that Kamb is not entitled to Kamb, U.S. Patent  
12 6,090,578, claims 2-3, both of which correspond to Count 1.

13 **Further Ordered** that claims 2-3 of Patent 6,090,578 be  
14 CANCELED, 35 U.S.C. § 135(a).

15 **Further Ordered** that a copy of the Decision and Judgment be placed  
16 in the files of Kamb, U.S. Patent 6,090,578, and Beach, U.S. Application  
17 09/016,869.

18 **Further Ordered** that should there be a settlement agreement, the  
19 parties' attention is directed to 35 U.S.C. § 135(c) and Bd. R. 205.

/Michael P. Tierney/ )  
MICHAEL P. TIERNEY )  
Administrative Patent Judge )

/James T. Moore/ )  
JAMES T. MOORE )  
Administrative Patent Judge )

/Sally Gardner Lane/ )  
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**Dyar, Leneetha**

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**Subject:** Interference 105459 (MPT), Paper No. 60-Decision-Bd.R. 125, Paper No. 61-Judgment-Preliminary Motions-Bd.R. 127

**Attachments:** 105459 060.pdf; 105459 061.pdf